Supreme Court, U.S.
FILED

051164 MAR 8 - 2006

OFFICE OF THE CLERK

CASE NO. ~~OFFICE~~

In The
United States Supreme Court

TATE TROYER AND CINDY TROYER,
Petitioners,

VERSUS

BOOMTOWN, LLC OF DELAWARE, LOUISIANA-I GAMING, APIC, GREG CHAMPAGNE, ST. CHARLES PARISH SHERIFF, MICHAEL MANUIOR, MADELINE MANUIOR, OFFICER FINN, THOMAS JONES, TERRY RICHARD, DISTRICT ATTORNEY PAUL CONNICK AND JOSEPH ROBERTSON,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeal for the Fifth Circuit
Case No. 05-30127

PETITION FOR A WRIT OF CERTIORARI

BURGOS & EVANS, LLC
ROBERT B. EVANS, III (#23473)
3632 CANAL STREET
NEW ORLEANS, LA 70119
(504) 488-3722
Counsel for Petitioners

QUESTION PRESENTED FOR REVIEW

Introductory Statement:

On April 25, 2003, the defendant police officer lied to the FBI allowing him to access its NCIC database. The officer retrieved Petitioner's, twenty year old, non-conviction information and published the information to the Petitioner's employer, resulting in Petitioner's termination. This is a case of first impression in the United States of America.

Question Presented:

I.

DOES 42 U.S.C. §1983 CREATE A CAUSE OF ACTION WHEN A POLICE OFFICER STEALS "NON-CONVICTION" INFORMATION FROM THE DATABASE OF THE NATIONAL CRIME INFORMATION CENTER AND PUBLISHES THAT INFORMATION TO THIRD PARTIES FOR NO LEGITIMATE PURPOSE?

II.

IF THE PRIVACY ACT DOES APPLY TO PLAINTIFFS WHO SEEK TO ENFORCE VIOLATIONS OF 42 U.S.C. § 3789g, DOES IT APPLY WHEN THE VIOLATOR IS A STATE OR LOCAL AUTHORITY?

PARTIES WHOSE JUDGMENTS ARE SOUGHT TO BE REVERSED

The undersigned counsel of record, pursuant to Rule 14, certifies that the Petitioners seek review of the judgements rendered in favor of the following listed parties:

Defendants - Respondents
Boomtown, LLC of Delaware
and Louisiana-1 Gaming, APIC,
Thomas Jones, Joe Robertson and
Madeline Manuior;

Defendants - Respondents
Greg Champagne
St. Charles Parish Sheriff,
Officer Michael Manuior, and
Officer Finn

Defendant - Respondents
Paul Connick, Jr., District Attorney
and Terry Richard

Petitioners are not a corporation.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES WHOSE JUDGMENTS ARE SOUGHT TO BE REVERSED	ii
TABLE OF CONTENTS	iii
TABLE OF CITED AUTHORITIES	iv
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
RELEVANT STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
ARGUMENT WITH REASONS TO ACCEPT WRIT	5
ISSUE ONE RESTATED	7
ISSUE TWO RESTATED	25
CONCLUSION	28
CERTIFICATE OF SERVICE	30

TABLE OF CITED AUTHORITIES

Alexander v. Peffer,
993 F.2d 1348, 1350 (8th Cir. 1993) 23

Bauer v. Texas, 341 F.3d 352, 357 (5th Cir. 2003) 8

Boorda v. Subversive Activities Control Board,
421 F.2d 1142 (1969), cert denied,
397 U.S. 1042 (1970) 18,28

City of St. Louis v. Praprotnik,
485 U.S. 112 (1988)) 8

Cline v. Rogers, 87 F.3d 176 (6th Cir.1996) 14

Davis III v. Bucher, 853 F.2d 718 (9th Cir. 1988) 23

Department of Air Force v. Rose,
425 U.S. 352 (1976) 12

Eagle v. Morgan, 88 F.3 620, 625 (8th Cir. 1996) 15

Ellerbe v. Andrews; 92-1376
(La.App.1st Cir. 7/2/93); 623 So.2d , 41, 42-44 12

Fadjo v. Coon, 633 F.2d 1172, 1176 (5th Cir. 1981) 8,14,21

Fernicola v. Keenan, 136 N.J.Eq. 9, 10, 39
A.2d 851 (1944) 16

Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 153 (1951) 18,28

Keaukaha-Panaewa Community v. Hawaiian Homes, 739 F.2d 1467 (9th Cir. 1984) 25,26

Lomax v. City of New Orleans, 04-0461 (J. Duval) (E.D.La. July 14, 2004); 2004WL1586539 26

Menard v. Mitchell, 430 F.2d 486, 492 (D.C. App. 1970) 10,17, 18,28

Middlesex County Sewage Authority v. National Sea Clammers Ass'n, 453 U.S. 1 (1981) 25,26

NAACP v. Alabama, 357 U.S. 449 (1958) 7

Nilson v. Layton City, 45 F.3d 369, 372 (10th Cir. 1995) 14,15

Olmstead, et al v. United States, 277 U.S. 438, 478 (1928) 8

Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976) 14

Plante v. Gonzales, 575 F.2d 1119, 1134 (5th Cir. 1978) 8,21,22

Polchowski v. Gorris, 714 F.2d 749, 751 (7th Cir. 1983) 25

Roe v. Wade, 410 U.S. 1 13, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973) 8,12

Shipp v. McMahon, 234 F.3d 907, 915 (5th Cir. 12/5/00)	27
Slayton v. Willingham, 726 F.2d 631, 635 (10th Cir. 1984)	14,22
Stefanoff v. Hays County, Texas, 154 F.3d 523,526 (5th Cir. 1998)	27
Toga Society, Inc. v. Lee, 03-2981 (J. Duval) (E.D.La. June 18, 2004); 323 F.Supp.2d 779	27
Tosh v. Buddies Supermarkets, 482 F.2d 329, 332 (5th Cir. 1973)	9,21,22
United States v. Dooley, 364 F. Supp. 75, 77, (E.D.Penn. 9/28/73)	10,18
United States v. Kalish, 271 F.Supp. 968, 970 (U.S. D.P.R. 1967).	10
United States v. Pedersen, 3 F.3d 1468, 1471 (11th Cir. 1993)	23
United States v. Rosen, 343 F.Supp.804, 807 (1972)	20
United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 771 (1989)	10,17,22, 23,28

Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) 27

Watkins v. United States, 354 U.S. 178, 187 (1967) 18,28

Whalen v. Roe, 429 U.S. 589 (1977)) 8,12,14

Wright v. City of Roanoke Redevelopment Housing Authority, 479 U.S. 416 (1987) 25

Zaffuto v. City of Hammond, 308 F.3d 485 (5th Cir. 2002) 15

STATUTES

U.S. Const. Amends. I, II, IV, and V 7
28 U.S.C. § 1291 1
42 USC § 1983 1,5,7
42 U.S.C 3789g 2,8
F.R.C.P.12(b)(6) 6
28 C.F.R. 20.21(b) 20,23
La.Rev.Stat. 44:3(A)(4)(a) 21
La.Rev.Stat. 15:587 21

SECONDARY AUTHORITIES

Right of Police to Retain Arrest Records, 49 N.C.L. Rev. 509, 510-514 (1971) 10,16

The F.B.I.'s Right to Retain and Disseminate Arrest Records of Persons Not Convicted of a Crime May Be Limited by the First and Fifth Amendments, 46 N.DameLaw 825 (1971). 10,16

OPINIONS BELOW

The opinion of the Fifth Circuit is unpublished.
The opinion of the district court is unpublished.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1291, as an appeal from a final judgment raising an issue of federal question in the United States Court of Appeals for the Fifth Circuit, dated December 12, 2005. Petitioner invokes jurisdiction under Rule 10(c) of this Court. There is no rehearing date applied for or pending. There is no requirement to give notice under Rule 29.4(b) or (c).

RELEVANT STATUTORY PROVISIONS

42 U.S.C. § 1983:

> Every person who, under color of state statute, ordinance, regulation, custom, or usage of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity , or other proper proceeding for redress...

42 U.S.C. § 3789(g)

(b) Criminal history information; disposition and arrest data; procedures for collection, storage, dissemination, and current status; security and privacy; availability for law enforcement, criminal justice, and other lawful purposes; automated systems; review, challenge, and correction of information. All criminal history information collected, stored, or disseminated through support under this title shall contain, to the maximum extent feasible, disposition a well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Office of Justice Programs shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this title, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

(c) Criminal intelligence systems and information; prohibition against violation of privacy and constitutional rights of individuals. All criminal intelligence systems operating through support under this title shall collect, maintain, and disseminate criminal intelligence information in conformance with policy standards which are prescribed by the Office of Justice Programs and which are written to assure that the funding and operation of these systems furthers the purpose of this title and to assure that such systems are not utilized in violation of the privacy and constitutional rights of individuals.

STATEMENT OF THE CASE

Tate Troyer is the plaintiff and former employee of Boomtown, LLC. Troyer was wrongfully terminated from Boomtown after several of the defendants illegally conspired to gain access to and publish his National Crime Information Center (hereinafter referred to as "NCIC") records by stealing the information from the Federal Bureau of Investigation (hereinafter referred to as "FBI"). Cindy Troyer is the wife of Tate Troyer.

Boomtown, LLC is a Delaware Limited Liability Company, which is a partner in Louisiana-I Gaming, a Louisiana Partnership in Commendum, together conducting a riverboat gaming business known as Boomtown Casino in Harvey, Jefferson Parish, Louisiana Three of the defendants were/are employees of Boomtown during the employment of Tate Troyer. Those are: Joseph Robertson, Thomas Jones